

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10451-RWZ

JOSEPH SCHMITT

v.

JEFFREY SMITH, et al.

CIVIL ACTION NO. 04-10717-RWZ

JOSEPH SCHMITT,

v.

PATRICK MULVEY, et al.

ORDER
February 13, 2008

ZOBEL, D.J.

The Court of Appeals has remanded these appeals for a determination in this court of a motion by defendants to vacate plaintiff's indigency status, filed on January 10, 2008.

As a preliminary matter, plaintiff, on January 2, 2008, filed an ex parte motion (Docket #109 in C.A. 04-10451) requesting that this court recuse itself. That motion is denied, and I proceed to the matter returned by the Court of Appeals.

Defendants' motion is premised on substantial changes in plaintiff's financial resources since he was allowed to proceed in forma pauperis in 2004. Records appended to the motion show that plaintiff received a total of \$3,697.28 during the

period July 8, 2007 through January 8, 2008. While it is true that he spent \$3,521.36 during the same period, none of these monies were spent on necessities as he remains in the custody of the Commonwealth of Massachusetts.

Plaintiff has filed a number of cases in this court and was granted indigency status in all. Defendants have recently moved in nearly all of the pending cases to revoke his indigency status based on a similar showing that he has received funds and spent it on things other than his lawsuits. Because the balance in his account has fluctuated widely and because plaintiff's funds were not adequate to pay filing fees for all of his pending cases, I denied defendants' motions in the cases still pending in this court.

However, given the amount of plaintiff's income received during the past six months, I cannot say that he is indigent within the meaning of 28 U.S.C. §1915(a)(1). Moreover, I am unable to certify, pursuant to subsection (a)(3), that the appeal is taken in good faith. Indeed, it is frivolous.

Defendants' motion to vacate plaintiff's indigency status (Docket #110 in both cases, C.A. 04-10717 and C.A. 04-10451) is ALLOWED.

February 13, 2008

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE